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assumption under the terms of this paragraph.

(Authority: 38 U.S.C. 3714)

(The Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0516)

[63 FR 12002, Mar. 12, 1998]

§ 36.4304 Deviations; changes of identity.

A deviation of more than 5 percent between the estimates upon which a certificate of commitment has been issued and the report of final payment of the proceeds of the loan, or a change in the identity of the property upon which the original appraisal was based, will invalidate the certificate of commitment unless such deviation or change be approved by the Secretary. Any deviation in excess of 5 percent or change in the identity of the property upon which the original appraisal was based must be supported by a new or supplemental appraisal of reasonable value: *Provided*, That substitution of materials of equal or better quality and value approved by the veteran and the designated appraiser shall not be deemed a "change in the identity of the property" within the purview of this section. A deviation not in excess of 5 percent will not require the prior approval of the Secretary.

[17 FR 9668, Oct. 25, 1952]

§ 36.4305 Partial disbursement.

In cases where intervening circumstances make it impracticable to complete the actual paying out of the loan originally proposed, or justify the lender in declining to make further disbursements on a construction loan, evidence of guaranty or of insurance of the loan or the proper pro rata part thereof will be issuable if the loan is otherwise eligible for automatic guaranty or a certificate of commitment was issued thereon: *Provided*,

(a) A report of the loan is submitted to the Secretary within a reasonable time subsequent to the last disbursement, but in no event more than 90 days thereafter, unless report of the facts and circumstances is made and an

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extension of time obtained from the Secretary.

(b) There has been no default on the loan, except that the existence of a default shall not preclude issuance of a guaranty certificate or insurance advice if a certificate of commitment was issued with respect to the loan.

(c) The Secretary determines that a person of reasonable prudence similarly situated would not make further disbursements in the situation presented.

(d) There has been full compliance with the provisions of 38 U.S.C. Chapter 37 and of the applicable regulations up to the time of the last disbursement.

(e) In the case of a construction loan when the construction is not fully completed, the amount and percentage of the guaranty and the amount of the loan for the purposes of insurance or accounting to the Secretary shall be based upon such portion of the amount disbursed out of the proceeds of the loan which, when added to any other payments made by or on behalf of the veteran to the builder or the contractor, does not exceed 80 percent of the value of that portion of the construction performed (basing value on the contract price) plus the sum, if any, disbursed by the lender out of the proceeds of the loan for the land on which the construction is situated: *And provided further*, That the lender shall certify as follows:

(1) Any amount advanced for land is protected by title or lien as provided in the regulations concerning guaranty or insurance of loans to veterans; and

(2) No enforceable liens, for any work done or material furnished for that part of the construction completed and for which payment has been made out of the proceeds of the loan, exist or can come into existence.

[13 FR 7275, Nov. 27, 1948, as amended at 15 FR 4397, July 12, 1950; 24 FR 2653, Apr. 7, 1959]

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

(a) Any loan for the purpose of refinancing (38 U.S.C. 3710(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and

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occupied or to be reoccupied if the refinancing loan is for the completion of major alterations, repairs or improvements to the property, by an eligible veteran as the veteran's home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home, shall be eligible for guaranty in an amount as computed under § 36.4302(a) provided that —

(1) The amount of the loan may not exceed an amount equal to 90 percent of the reasonable value of the dwelling or farm residence which will secure the loan, as determined by the Secretary.

(Authority: 38 U.S.C. 3710(e)(1) and 3710(h))

(2) The dollar amount of discount, if any, to be paid by the veteran is reasonable in amount as determined by the Secretary in accordance with § 36.4312(d)(7)(i).

(3) The loan is otherwise eligible for guaranty.

(b) [Reserved]

(c) Nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance under the provisions of 38 U.S.C. 3710(a)(5) a VA guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as a home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home.

(Authority: 38 U.S.C. 3710(e)(1))

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) [Reserved]

(f) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on

an existing land sale contract relating to a veteran's dwelling or farm residence.

(g) A veteran may refinance (38 U.S.C. 3710(a)(9)(B)(ii)) an existing loan that was for the purchase of, and is secured by, a manufactured home in order to purchase the lot on which the manufactured home is or will be permanently affixed, provided the following requirements are met:

(1) The refinancing of a manufactured home and the purchase of a lot must be considered as one loan;

(2) The manufactured home upon being permanently affixed to the lot will be considered real property under the laws of the State where it is located;

(3) The loan must be secured by the same manufactured home which is being refinanced and the real property on which the manufactured home is or will be located;

(4) The amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the lot; the costs of the necessary site preparation of the lot as determined by the Secretary; a reasonable discount as authorized in § 36.4312(d)(6) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in § 36.4312.

(5) If the loan being refinanced was guaranteed by VA, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be, guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 3702(b) the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty

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entitlement used to obtain VA-guaranteed loan being refinanced and any additional guaranty entitlement available to the veteran. However, the total guaranty may not exceed the guaranty amount as calculated under § 36.4302(a) of this part.

(Authority: 38 U.S.C. 3703(a))

[35 FR 18872, Dec. 11, 1970, as amended at 46 FR 43672, Aug. 31, 1981; 48 FR 27403, June 15, 1983; 49 FR 42571, Oct. 23, 1984; 50 FR 3334, Jan. 24, 1985; 55 FR 40656, Oct. 4, 1990]

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), a veteran may refinance an existing VA guaranteed, insured, or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:

(1) The loan must be secured by the same dwelling or farm residence as the loan being refinanced; and

(2) The veteran must own the dwelling or farm residence securing the loan and

(i) Must occupy the dwelling or residence as his or her home; or

(ii) Must have previously occupied the dwelling or residence as his or her home and must certify, in such form as the Secretary shall require, that he or she has previously occupied the dwelling or residence; or

(iii) In any case in which the veteran is on, or was on, active duty status as a member of the Armed Forces and is unable, or was unable, to occupy the residence or dwelling as a home because of such active duty status, the spouse of the veteran must occupy, or must have previously occupied, such dwelling or residence as the spouse's home and must certify to that occupancy in such form as the Secretary shall require.

(Authority: 38 U.S.C. 3710(e)(1))

(3) The monthly principal and interest payment on the new loan must be lower than the payment on the loan being refinanced, except when the term of the new loan is shorter than the term of the loan being refinanced; or the new loan is a fixed-rate loan that refinances a VA-guaranteed adjustable

rate mortgage; or the increase in the monthly payments on the loan results from the inclusion of energy efficient improvements, as provided by § 36.4336(a)(4); or the Secretary approves the loan in advance after determining that the new loan is necessary to prevent imminent foreclosure and the veteran qualifies for the new loan under the credit standards contained in § 36.4337.

(4) The amount of the refinancing loan may not exceed:

(i) An amount equal to the balance of the loan being refinanced, which must not be delinquent, except in cases described in paragraph (a)(5) of this section, and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA-guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, the amount referred to with respect to the loan under paragraph (a)(4)(i) of this section, plus the amount authorized by § 36.4336(a)(4).

(Authority: 38 U.S.C. 3703, 3710)

(5) If the loan being refinanced is delinquent (delinquent means that a scheduled monthly payment of principal and interest is more than 30 days past due), the new loan will be guaranteed only if the Secretary approves it in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standards contained in § 36.4337. In such cases, the term "balance of the loan being refinanced" shall include any past due installments, plus allowable late charges.

(6) The dollar amount of guaranty on the 38 U.S.C. 3710(a)(8) or (a)(9)(B)(i) loan may not exceed the greater of the original guaranty amount of the loan being refinanced or 25 percent of the loan; and

(7) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being refinanced plus ten years, or the maximum loan term allowed under 38 U.S.C.